Annual Report
for the fiscal year ending March 31, 2009

Workers' Advisers Program

Labour & Workforce Development

NOVA SCOTIA
Chief Worker Adviser

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October 30, 2009

The Honourable Marilyn More
Minister of Labour & Workforce Development
5151 Terminal Road
Halifax, NS

Dear Minister More:

In accordance with Section 228 of the *Workers' Compensation Act*, S.N.S. 1994–95 c.10 (as amended) (Part III), I have the honour of submitting the report of the Workers' Advisers Program for the period April 1, 2008 to March 31, 2009.

Yours truly,

Kenny LeBlanc
Barrister & Solicitor
Chief Worker Adviser

copy: Margaret MacDonald, Deputy Minister
Labour & Workforce Development

copy: Laurie Rantala, Director
Labour Services Branch

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Letter from the Chief Worker Adviser

The Workers' Advisers Program had a very busy and productive year in 2008–09. At year end the Program had 837 active files. During the year the Program had 1,270 requests for service, 1,241 files were opened, and we provided service to 2,092 clients.

The majority of the Program's work continued to be at the Workers' Compensation Appeals Tribunal. During 2008–09 the Program filed 330 appeals with the Appeals Tribunal on behalf of workers. We also filed 122 appeals to Hearing Officers and four appeals to the Nova Scotia Court of Appeal.

Among our successes during the year were successful results we obtained for workers in the *Pelley and O'Neill* decisions from the Court of Appeal. *Pelley* established an important precedent for workers 63 years or older when injured, and *O'Neill* was a successful defense of an employer's appeal against an award of survivor benefits to an injured worker's widow.

Chronic pain claims and appeals became part of the regular workers' compensation claims process following the closure of the Workers' Compensation Board's Transition Services Team in June 2008. Following the enactment of the Chronic Pain Regulations in 2004, the Board's Transition Services Team investigated and adjudicated chronic pain claims in a separate process until June 2008. Mirroring the Board's practice, the Program changed its practice to deal with chronic pain clients as part of our regular system.

Notwithstanding the closure of the Transition Services Team and the resolution of many chronic pain claims, the number of appeals in the workers' compensation system remained relatively high and was a regular issue for discussion at the Issues Resolution Working Group, of which I am a member. Not surprisingly, the high number of appeals impacted on the Program's workload and our ability to meet our target of two to four weeks for Workers' Advisers to meet with workers to discuss their claims.

Nevertheless, the Program was able to meet the four-week target as the average wait time for services to workers in 2008–09.

I continued to be a member of the Heads of Agencies Committee and the Issues Resolution Working Group as we worked to improve services to stakeholders of the Workplace Safety and Insurance System.

In 2008–09 I continued my involvement with Labour and Workforce Development's Human Resources Initiatives as Senior Management Advisor for the Rewards and Recognition Committee.

I participated in the annual conference of the Canadian Association of Workers Advisors and Advocates (CAWAA) in Yellowknife from June 29 to July 4, 2008. This was a very educational and enjoyable experience. I was and continue to be the Chair for CAWAA's

Research Committee and, in this role, I prepared a legal update paper that I presented at the conference.

Along with the Program's other lawyer Workers' Advisers, in the Fall 2008 I successfully completed Tiers 1 and 2 of the Nova Scotia Barristers' Society course for the new Civil Procedures Rules. Successful completion of this course was required to represent clients in Court.

We look forward to another busy and successful year in 2009–10.

Submitted,

Kenny LeBlanc
Chief Worker Adviser

Mandate and History

Nova Scotian workers injured while working are protected through benefits and services available under the *Workers' Compensation Act*, which provides for a no-fault insurance system covering work-related injuries. Through what is known as the historic trade-off, workers and their families give up the right to sue for the consequences of work-related injuries in return for compensation payable regardless of fault and without the need to pursue a lawsuit in court. The other side of the historic trade-off is that employers are responsible to pay assessments to cover the cost of the system in return for immunity from liability due to work-related injuries.

The Workers' Compensation Board of Nova Scotia, established under Part I of the *Act*, is the policy-leader for the workers' compensation system, administers the Accident Fund made up of employers' assessments which covers the costs of the system, and is responsible for investigating and adjudicating claims in the first instance. Workers or employers may appeal decisions of the Board to the Nova Scotia Workers' Compensation Appeals Tribunal (WCAT), established under Part II of the *Act*. There is a limited right of appeal from decisions of the Appeals Tribunal to the Nova Scotia Court of Appeal.

The Workers' Advisers Program of Nova Scotia is established under Part III of the *Act* and the regulations as an independent legal clinic to provide free assistance, advice, and representation to injured workers and their families claiming workers' compensation benefits and who meet the Program's eligibility criteria.

The Program receives the funding for its operations by way of a grant from the Accident Fund.

The Chief Worker Adviser is responsible for supervising the Program and reports to the Minister of Nova Scotia's Department of Labour and Workforce Development. The Program has a head office in Halifax and an office in Sydney.

Workers' Advisers (who are lawyers and non-lawyers) with the Program travel throughout the province to meet with workers and represent them at hearings at all levels of appeal in the workers' compensation system, including Court if necessary. Only Workers' Advisers who are lawyers are allowed to represent workers in Court.

The Workers' Advisers Program was established in February 1996 when Part III, along with most of the rest of the current *Workers' Compensation Act*, was proclaimed into force. The Program under Part III replaced the former Workers' Counselors' Program, which administered a certificate system whereby private law firms around the province provided legal representation to workers in connection with their workers' compensation claims.

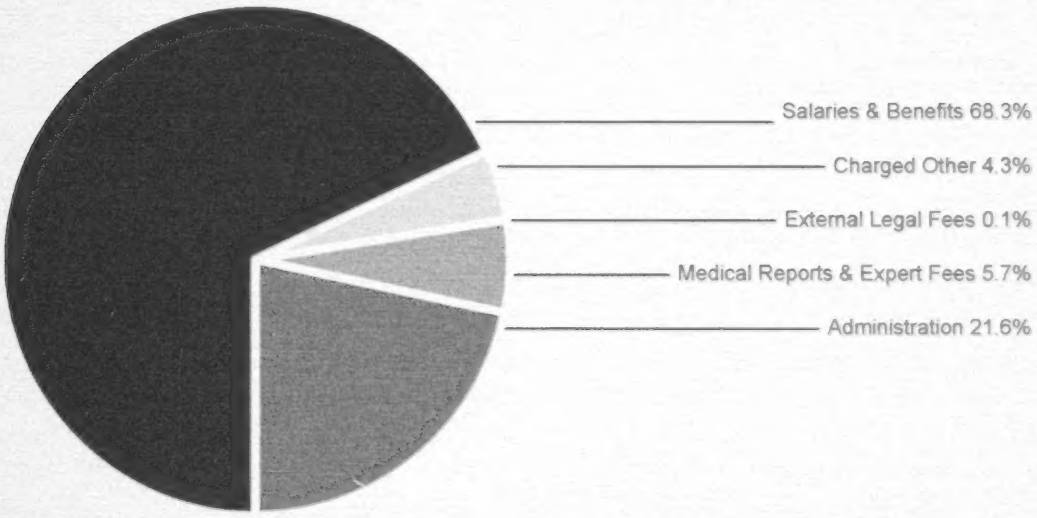
The Program's staff arranged for the opening of the Sydney office in May 1997. The Program has maintained the Halifax and Sydney offices since that time, while monitoring the caseload by county to determine whether other offices in other parts of the province should be opened.

Annual Program Expenditures

The total cost associated with the operation of the Program is charged to the Accident Fund administered by the Workers' Compensation Board. The final 2008–09 report provided by the Department of Finance indicates the following expenditures:

	2008–09	2007–08	2006–07	2005–06	2004–05
Salaries & Benefits	$1,643,841	$1,327,695	$1,390,072	$1,270,467	$1,336,684
Administrative	$520,494	$553,318	$414,064	$532,192	$421,692
Medical Reports & Expert Fees	$138,257	$101,843	$74,773	$109,816	$225,628
External Legal Fees	$1,895	$306	$2,156	$1,007	$36,739
Consulting Fees	N/A	N/A	N/A	$26,875	$82,787
Less Chargeable to Other Departments	**($102,310)**	**($32,568)**			
TOTAL	**$2,202,177**	**$1,950,594**	**$1,881,065**	**$1,940,356**	**$2,103,530**
% of Authority Spent	**89.48%**	**82.10%**	**83.14%**	**84.77%**	**89.20%**
% of Present Forecast	**92.24%**				

2008-09 Expenditures

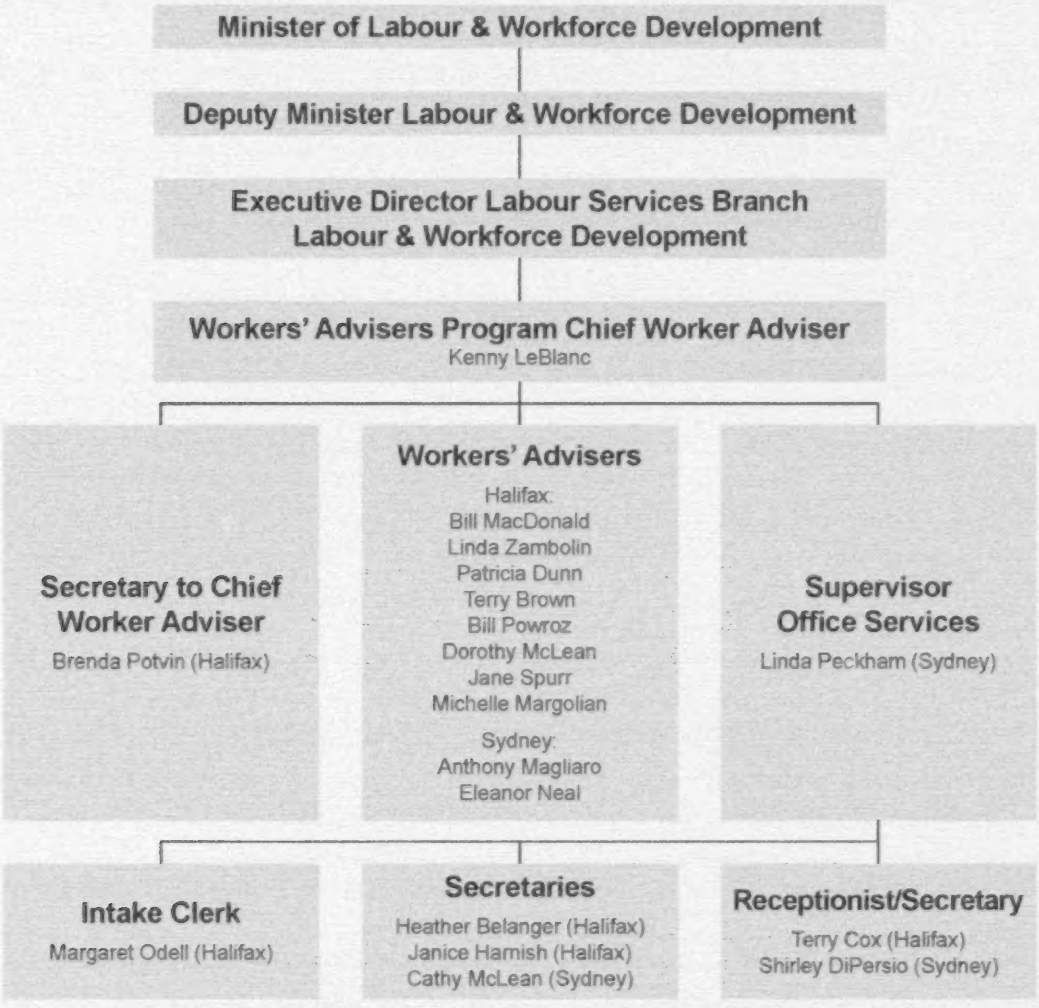


Personnel

The Halifax office consists of the Chief Worker Adviser, the Secretary to the Chief Worker Adviser, the Intake Clerk, eight workers' advisers, a secretary/receptionist, and two secretaries. One of the Halifax workers' advisers is assigned to the Sydney office.

The Sydney office consists of two workers' advisers, a secretary/receptionist, and a secretary. The Supervisor Office Services for both offices is currently based in the Sydney office.

Organizational Chart



(Incumbents in place as of March 31, 2009)

Client Services

The service provided to workers under the Workers' Advisers Program can include representation through all phases of appeal in the workers' compensation system. It can begin with the first denial at the Workers' Compensation Board and end when an appeal is completed or the worker is no longer eligible for service.

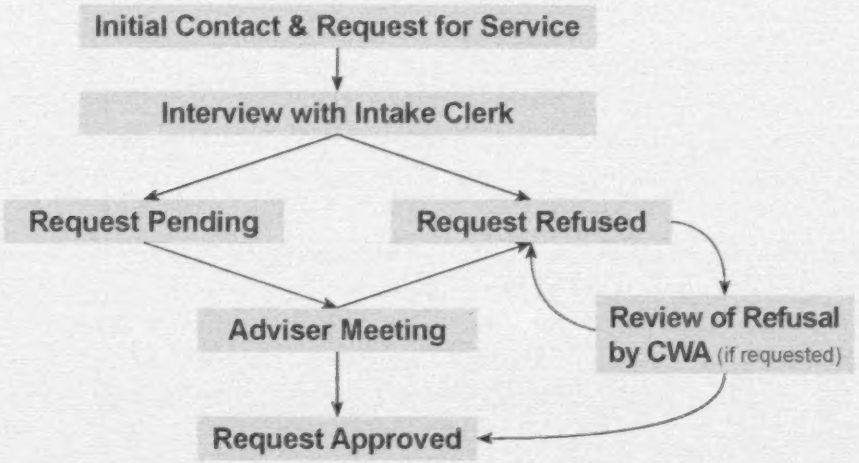
Intake

An intake process exists to assess an injured worker's request for service under the Eligibility Regulations. The initial contact may be by telephone, by letter, or in person.

First it must be determined whether the worker's request is as a result of a denial from the Workers' Compensation Board. The intake clerk contacts the worker and determines if he or she meets this initial eligibility requirement. If the worker does not meet this requirement, the request for service is refused. The worker may be referred to the Worker Stakeholder Counselor to obtain general information.

If the worker does meet this initial requirement, the worker is assigned to a Workers' Adviser. The Workers' Adviser normally meets the worker either in person or by telephone to review the file and then make a decision on whether the request for service can be approved. After a worker meets with a Workers' Adviser, the majority of claims are approved for service. If a worker is refused service, he or she is informed and given reasons.

An ineligible worker may request that the application be forwarded to the Chief Worker Adviser for a final determination of eligibility. If the Chief Worker Adviser determines the worker is not eligible for service, the worker is advised of the reasons, the process is documented and the request refused. If he or she is eligible for service, the worker becomes a client of the Program.



Operations

Case Summary Statistics

Active number of files at year beginning April 1, 2008 = 851
Active number of files at year ending March 31, 2009 = 837

2008–09	Requests for Service	Files Opened	Files Closed	# Clients Served 2008–09
Apr/May/Jun	422	397	311	1248
Jul/Aug/Sep	291	280	316	1528
Oct/Nov/Dec	274	320	272	1848
Jan/Feb/Mar	283	244	266	2092
TOTAL FOR YEAR	**1,270**	**1,241**	**1,165**	**2,092**

"Requests for Service" represents the number of calls received by the Intake Clerk for processing during each of the reporting periods.

"# Clients Served 2008–09" represents the number of active files on April 1, 2008, combined with the total number of files opened to the end of the fiscal year (March 31, 2009).

On March 31, 2009, there were 36 pending service requests or clients that had gone through the intake process but had not yet been contacted by a Workers' Adviser to discuss their case.

Process

Service Waiting Time

Intake Period 2008–09	Halifax	Sydney	Out-of-Town		
			Bridgewater/ Yarmouth	Digby/Kentville/ Amherst/Truro	New Glasgow/ Antigonish/Port Hawkesbury
April/May/June	2.3	1.5	3.6	4.6	5.4
July/August/September	3.7	4.1	5.9	4.9	4.7
October/November/December	4.3	3.1	3.7	4.5	3.1
January/February/March	4.4	4.1	4.2	4.4	4.0
AREA AVERAGES	**3.7**	**3.2**	**4.4**	**4.6**	**4.3**
LOCAL OFFICES AVERAGE WAITING PERIOD					**3.4 weeks**
OUT-OF-TOWN AVERAGE WAITING PERIOD					**4.4 weeks**
PROVINCIAL AVERAGE WAITING PERIOD					**4.0 weeks**

The Program continues to monitor the waiting time for service on a monthly basis. The target remains at two to four weeks. Subject to delays requested by the worker or extraordinary circumstances, we are able to maintain a reasonable wait for service that is within this range. **The provincial average is 4.0 weeks (includes local and out-of-town times).**

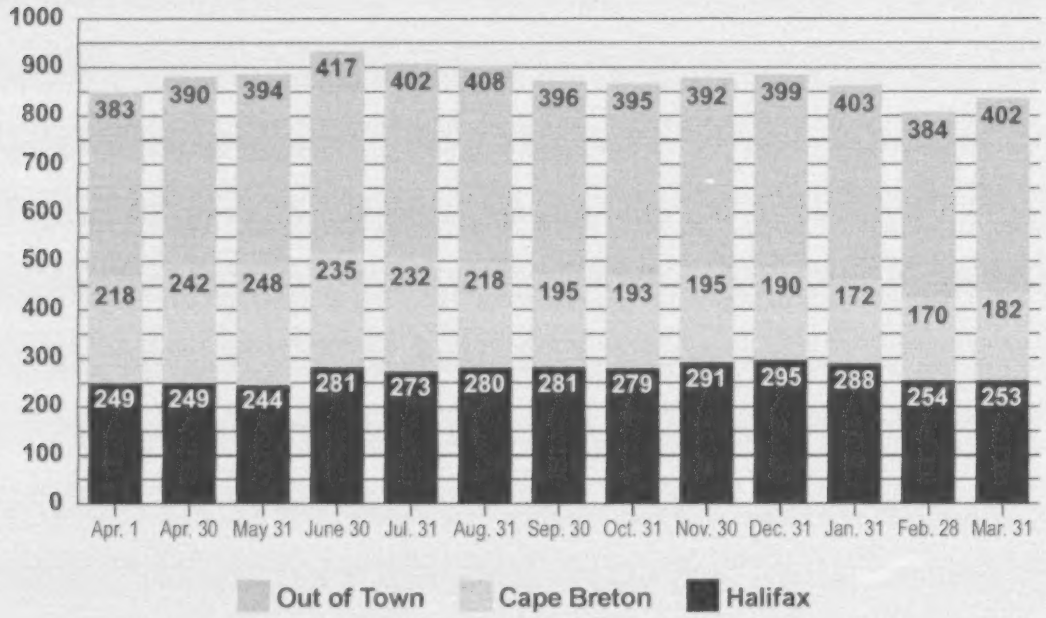
The waiting time for service for all intake is calculated from the date the worker first contacts the Intake Clerk to the date of the worker's first appointment with a Workers' Adviser (in person or by telephone) to discuss the worker's appeal. Factors affecting service wait times include access to the Workers' Compensation Board file, both paper and electronic, and the Workers' Advisers' travel to out-of-town appointments and workload.

Client Count by County

On April 1, 2008 the Program had 851 active files. On March 31, 2009 there were 837 active files, a decrease of 1.7 percent over the course of the year. On average, **875** open files were carried each month during 2008–09.

County	Apr. 1/08	April	May	June	July	August	September	October	November	December	January	February	Mar. 31/09
Annapolis	**17**	19	17	16	13	11	12	13	13	15	16	17	**17**
Antigonish	**10**	12	11	9	7	8	5	6	7	6	7	7	**8**
Cape Breton	**219**	242	248	235	232	216	195	193	195	190	172	170	**182**
Colchester	**34**	32	32	37	34	36	35	33	37	35	32	31	**31**
Cumberland	**42**	48	49	54	52	51	50	52	52	51	51	51	**55**
Digby	**12**	11	12	14	13	12	11	11	7	5	5	5	**6**
Guysborough	**10**	11	11	10	8	8	7	9	11	12	14	12	**14**
Halifax	**249**	249	244	281	273	280	281	279	291	295	288	254	**253**
Hants	**37**	36	36	39	39	40	41	39	42	41	40	36	**37**
Inverness	**7**	7	12	12	13	12	11	8	8	8	7	5	**8**
Kings	**48**	47	43	47	43	43	46	47	50	52	52	50	**54**
Lunenburg	**54**	56	55	52	55	61	63	63	59	65	66	66	**69**
Pictou	**46**	44	53	58	57	57	54	49	46	46	48	42	**42**
Queens	**15**	13	14	11	11	12	14	17	13	17	18	15	**14**
Richmond	**11**	12	11	17	15	14	9	14	14	12	11	12	**12**
Shelburne	**11**	13	13	14	14	14	13	10	6	7	9	8	**8**
Victoria	**2**	3	3	3	3	4	3	1	2	2	2	2	**2**
Yarmouth	**10**	10	8	11	12	13	12	10	10	11	11	12	**10**
Other	**17**	16	14	13	13	12	10	13	15	14	14	13	**15**
TOTAL	**851**	**881**	**886**	**933**	**907**	**904**	**872**	**867**	**878**	**884**	**863**	**808**	**837**

Client Count by Area



- The above chart graphically displays the proportion of clients living in Halifax, Cape Breton, and Out of Town. The Out of Town figures represent all clients living outside metro Halifax or Cape Breton.
- An average of 30.9 percent of the Program's clients live within the Halifax Regional Municipality; 23.6 percent live within the Cape Breton Regional Municipality and 45.4 percent reside outside the CBRM or HRM areas.
- File reviews are conducted to confirm that all files carried meet eligibility criteria and have active appeals.
- Files are distributed between the Halifax and Sydney offices. One of the Advisers serving the Sydney area is located in Halifax.

File Distribution

Representation

Workers' Advisers attend hearings and meetings, obtain evidence, consult with the injured worker, and present evidence before the deciding body. Workers' Advisers also maintain a detailed client file consisting of the injured worker's personal information necessary to pursue the appropriate benefits.

Workers' Advisers work only in the area of workers' compensation law and have ready access to the research and materials necessary to successfully pursue an appeal. Workers' Advisers are attuned to issues and pressures affecting their clients and strive to achieve an effective working relationship with them.

The Workers' Advisers Program is not mandated to represent injured workers as a special interest group or to lobby government for changes in legislation. The Program does not pursue other matters peripheral to the workers' compensation claim such as Canada Pension benefits, Unemployment Insurance, or Social Assistance.

Workers' Advisers do not represent employers on matters of compensation appeals. They do not advise or represent governments or other agencies on matters of workers' compensation.

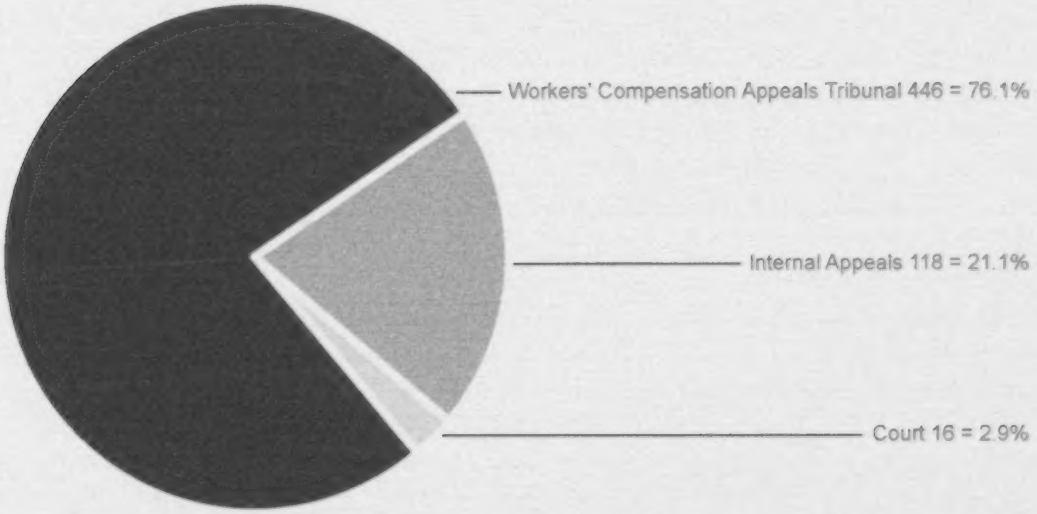
Program Statistics

	Submissions/Hearings Done			New Appeals Filed		
	Court*	Hearing Officer	WCAT	Court	Hearing Officer	WCAT
April	3	5	41	0	13	22
May	1	9	37	0	4	20
June	1	10	47	0	17	16
July	0	13	33	0	12	23
August	0	13	28	1	6	17
September	4	13	22	0	6	24
October	1	9	46	1	9	18
November	1	7	38	0	12	33
December	1	7	42	0	14	36
January	3	5	17	0	8	40
February	1	9	35	1	7	20
March	0	18	40	1	14	61
TOTAL	**16**	**118**	**426**	**4**	**122**	**330**

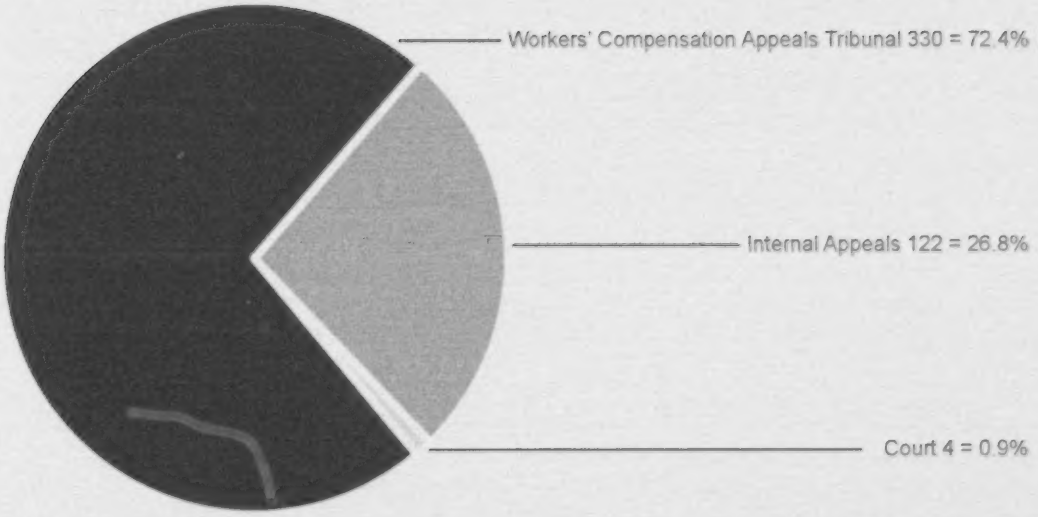
**includes Chambers*

- The Program's resources are mainly focused on appeals at the WCAT level, with lower levels of activity at the Hearing Officer level and minimal activity at the Court of Appeal.
- An increasing number of clients file their own appeals to the Hearing Officer before going through our intake process.
- Four new appeals were filed to the Court of Appeal during the year 2008–09.

Hearings/Submissions



New Appeals Filed



Client Satisfaction

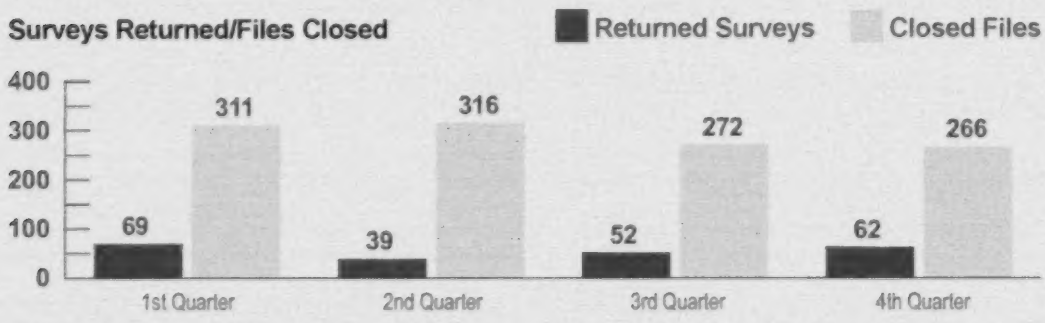
Client Survey Results

The Program began mailing satisfaction surveys to clients with their closed files in April 2003. This practice will continue so that future results will allow us to track satisfaction trends and address service issues.

	Apr./ May/ June	July/ Aug./ Sep.	Oct./ Nov./ Dec.	Jan./ Feb./ Mar.	Total	% RETURN FOR YEAR
Closed Files	311	316	272	266	1165	
Returned Surveys	69	39	52	62	222	**19.1%**
Provided Comments	42	22	37	45	146	**65.8%**
Not Positive Outcome	31	18	17	20	86	**38.7%**
Negative Comments	10	3	4	4	21	**9.5%**
% Return for the Quarter	22.2%	12.3%	19.1%	23.3%		
Variance from Previous Quarter	6.7%	-9.8%	6.8%	4.2%		

Although 38.7% of the clients returning surveys did not have a positive outcome with respect to their appeal (86 divided by 222 surveys returned), only 21 negative comments were received (9.5%). **Our satisfaction rate remains high.**

Based on the data obtained from the returned surveys, we can determine that **93.7%** of our clients **"strongly agreed"** or **"agreed"** that the service provided by the Program staff satisfied their requirements.



Specific results to our questions are as follows:

		Strongly Agree	Agree	Disagree	Strongly Disagree
1. The program staff I dealt with were professional and friendly at all times.	Apr/May/Jun	66.4%	24.9%	5.7%	3.0%
	Jul/Aug/Sep	73.9%	13.9%	6.3%	0.0%
	Oct/Nov/Dec	74.9%	17.3%	5.1%	2.6%
	Jan/Feb/Mar	73.8%	16.4%	3.5%	1.9%
% FOR YEAR		**72.3%**	**18.1%**	**5.2%**	**1.9%**
2. In my experience, I felt the program staff had the knowledge and experience for dealing with my situation.	Apr/May/Jun	59.0%	20.1%	13.3%	7.6%
	Jul/Aug/Sep	69.7%	17.8%	8.8%	0.0%
	Oct/Nov/Dec	66.3%	26.0%	5.1%	2.6%
	Jan/Feb/Mar	71.7%	15.0%	8.4%	4.9%
% FOR YEAR		**66.7%**	**19.7%**	**8.9%**	**3.8%**
3. I felt the program staff did their very best to provide me with the best possible service.	Apr/May/Jun	53.5%	24.4%	14.8%	5.7%
	Jul/Aug/Sep	74.2%	13.3%	6.3%	6.3%
	Oct/Nov/Dec	69.8%	19.0%	6.0%	5.1%
	Jan/Feb/Mar	72.1%	13.1%	8.4%	6.3%
% FOR YEAR		**67.4%**	**17.5%**	**8.9%**	**5.9%**
		All the Time	**Most of the Time**	**Sometimes**	**Never**
4. My calls were returned within 24 hours.	Apr/May/Jun	52.5%	30.7%	10.6%	4.2%
	Jul/Aug/Sep	62.0%	19.8%	10.8%	5.7%
	Oct/Nov/Dec	51.8%	34.0%	6.5%	7.7%
	Jan/Feb/Mar	58.7%	29.5%	5.2%	6.6%
% FOR YEAR		**56.3%**	**28.5%**	**8.3%**	**6.1%**
5. My questions were answered to my satisfaction.	Apr/May/Jun	59.4%	17.7%	14.5%	8.3%
	Jul/Aug/Sep	81.0%	7.1%	8.2%	3.7%
	Oct/Nov/Dec	64.2%	24.6%	3.5%	7.7%
	Jan/Feb/Mar	72.4%	14.7%	4.9%	6.6%
% FOR YEAR		**69.3%**	**53.1%**	**7.8%**	**6.6%**
SATISFACTION RATING		**93.7%**		**12.4%**	

Committees and Associations

Canadian Association of Workers' Advisers and Advocates

The Canadian Association of Workers' Advisers and Advocates (CAWAA) is a national affiliation created to develop a professional system of sharing information and best practices across jurisdictions and explore emerging compensation issues relevant to workers respecting its members' distinct workers' compensation mandates.

The Chief Worker Adviser represents the Nova Scotia Workers' Advisers Program at this association and chairs its Research Committee. Additional information on this association is available on their website: http://cawaa.org/

Workplace Safety and Insurance System Advisory Councils and Working Groups

The Workplace Safety and Insurance System includes workers, employers, the agencies (Workers' Advisers Program, Workers' Compensation Appeals Tribunal, Occupational Health and Safety, and the Workers' Compensation Board of Nova Scotia), and others who provide services in the system. Additional information is available on their website: http://www.wsis.ns.ca/index.php

The **System Performance Advisory Committee** comprises representatives of the worker and employer communities, each of the four system partner agencies (Occupational Health and Safety Division, Workers' Advisers Program, Workers' Compensation Appeals Tribunal, and Workers' Compensation Board), members of the Occupational Health and Safety Advisory Council and members of the Workers' Compensation Board's Board of Directors. The role of the Committee is to advise the Heads of Agencies on system performance, and on measurement of that performance. It is also the Committee's role to provide advice on how to improve system transparency and increase accountability to stakeholders.

The **Issues Resolution Working Group**, consisting of representatives from WAP, WCB, and WCAT, has been established to advise the agencies and system on ways to improve the effectiveness and efficiency of issue resolution within the system.

The **Heads of Agencies Committee** comprises the heads of the four System agencies, namely:

- Director of the Occupational Health and Safety Division;
- Chief Worker Adviser of the Workers' Advisers Program;
- Chief Appeal Commissioner of the Workers' Compensation Appeals Tribunal, and
- CEO of the Workers' Compensation Board.

Members of the Heads of Agencies Committee are responsible for the ongoing delivery of service to workers and employees in the system and for measurement and reporting of outcomes and progress in alignment with system goals. They are also responsible for coordinating strategic plan implementation.

Other Committees and Associations

Workers' Advisers Program staff are involved in many other committees and associations to enhance their contribution to the workers' compensation system, the department, and the community. They include:

- Joint Occupational Health and Safety Committee
- Labour and Workforce Development Senior Management
- Nova Scotia Barristers' Society
- Canadian Bar Association
- Association of Workers' Compensation Boards of Canada
- Labour and Workforce Development Human Resource Initiatives Committee
- United Way Campaign

Professional Development and Training

This year, as in the past, many staff members took part in training programs to enhance their professional skills and personal development.

All staff members were in compliance with the departmental mandatory training including First Aid/CPR, Introduction to Occupational Health and Safety, Respectful Workplace, and Diversity and Employment Equity Education. The Chief Worker Adviser completed the Leading a Respectful Workplace training.

All Workers' Advisers lawyers completed the Civil Procedures Rules course, Tiers 1 and 2, through the Nova Scotia Barristers' Society in November and December of 2008.

Several staff members took Canadian Bar Association courses such as the Jurisdiction of Arbitrators and Tribunals, Litigation for Legal Assistants' Conference, and the 2009 Annual Professional Development Conference.

Several Workers' Advisers attended joint training opportunities, such as Functional Capacity Evaluations and Third Party Investigations, that were hosted by the Workers' Compensation Board.

In addition, two staff members attended Family Caregiving and the Workplace training with the support of the Program.